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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

SHELDON A. KEY, TRUSTEE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The order of the district court confirming the plan of reorganization (Appendix C, *infra*, pp. 10a–15a) is not officially reported. The opinion of the court of appeals (Appendix A, *infra*, pp. 1a–8a) is reported at 407 F. 2d 635.

JURISDICTION

The judgment of the court of appeals (Appendix B, *infra*, p. 9a) was entered on February 27, 1969. On May 20, 1969, Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to and

including July 27 (a Sunday). The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Secretary of the Treasury's rejection of a debtor's proposed plan of voluntary corporate reorganization under Chapter X of the Bankruptcy Act entitles the United States to have its unpaid tax claims first satisfied under Section 3466 of the Revised Statutes.

2. If the United States is not entitled to absolute priority of payment, whether it must accept payment later in time than junior creditors and without provision for interest during the period of delay.

STATUTES INVOLVED

The pertinent provisions of Revised Statutes, Section 3466 and of Sections 199, 216 and 221 of the Bankruptcy Act, as amended, are set forth in Appendix D, *infra*, pp. 16a–18a.

STATEMENT

On May 3, 1954, Hancock Trucking, Inc. (the debtor) filed a voluntary petition for corporate reorganization under Chapter X of the Bankruptcy Act, as amended, in which it alleged that it was unable to meet its debts as they became due and requested the appointment of a trustee to operate its business and manage its property. The United States filed proofs of claim for unpaid withholding of federal income, employment and excise taxes in the amount of $377,648.79. (Appendix A, *infra*, p. 1a.)

An initial reorganization plan was confirmed by the

district court in 1957 but, for reasons not relevant here, was never consummated.[1] Subsequently, with district court approval, the debtor agreed with Hennis Freight Lines, Inc. that Hennis would purchase its major asset, Interstate Commerce Commission operating rights for truck freight services. The agreement provided that Hennis would pay not more than $935,000 for the rights—$300,000 within 90 days of the Commission's approval of the sale and the balance in 78 monthly installments. The Commission approved the sale, with modifications, in March of 1965 (App. A, *infra*, p. 2a).

On June 23, 1967, the trustees filed an amended plan of reorganization, the terms of which reflected this underlying sale. The $300,000 down payment was to be exhausted by paying certain wage and local and state tax claims in full, 20 percent of the claims of the unsecured creditors, and 10 percent of the United States' tax claims and other local and state tax claims. The remainder of the amount due to the United States and to local and state tax authorities was to be paid in 78 monthly installments, secured by an assignment of the note and chattel mortgage Hennis had executed on its purchase of the debtor's operating rights. No interest was to be paid in connection with the installment payments; the plan did not contemplate the

[1] Under this plan, the United States and certain states were to be paid 25 percent of their tax claims in cash upon confirmation, and the balance in four quarterly installments, with six percent interest on the unpaid balance. The plan also provided an acceleration clause in favor of the United States in the event of default. The United States had indicated that it would accept this plan.

continued existence of the debtor (App. A, *infra*, p. 2a).

The Secretary of the Treasury filed a timely notice that he rejected the amended plan but, following a hearing, the district court nonetheless confirmed it (App. C, *infra*, p. 15a). Upon the United States' appeal from the order of confirmation, the court of appeals affirmed (App. A, *infra*, p. 8a).

REASONS FOR GRANTING THE WRIT

The court of appeals has erroneously decided an important question in the administration of the bankruptcy and federal tax laws, denying to the United States in Chapter X reorganizations of insolvent corporations the absolute priority of payment to which Section 3466 of the Revised Statutes, 31 U.S.C. 191, entitles it with respect to all debts, whether for taxes or not. The court's interpretation of Section 3466 deviates from this Court's interpretation in equity receivership proceedings, the forerunners of Chapter X reorganizations, and conflicts with the interpretation given that section by other courts of appeals in Chapter X proceedings. Moreover, even if Section 3466 were not applicable, the terms of the installment payments of the debtor's tax obligations approved below would deprive the United States of the "full payment" of taxes to which it is independently entitled by Section 199 of the Bankruptcy Act, 11 U.S.C. 599.

1. Since virtually the beginning of the Republic, Section 3466 and its predecessors have guaranteed an unqualified priority of payment for all "debts due to the United States" by an insolvent debtor. The gov-

ernment's absolute priority under Section 3466 has been uniformly held to apply to equity receivership proceedings, the forerunner of Chapter X corporate reorganizations. *Price* v. *United States,* 269 U.S. 492, 502–503; *United States* v. *Butterworth Corp.,* 269 U.S. 504, 513; *Spokane County* v. *United States,* 279 U.S. 80; *United States* v. *Emory,* 314 U.S. 423, 426–429. And with equal uniformity it has been held that the term "debts due to the United States", as used in the statute, includes federal taxes.[2] *Price* v. *United States, supra,* p. 499; *Spokane County* v. *United States, supra,* pp. 92–93; *Illinois* v. *Campbell,* 329 U.S. 362, 366–367; *Massachusetts* v. *United States,* 333 U.S. 611, 625–626.

Other courts of appeals have applied the unequivocal language of Section 3466 to give the United States first access to insolvents' assets in Chapter X reorganizations. *United States* v. *Anderson,* 334 F. 2d 111 (C.A. 5), certiorari denied, 379 U.S. 879; *In re Cherry Valley Homes, Inc.,* 255 F. 2d 706 (C.A. 3), certiorari denied *sub nom. DuBois* v. *United States,* 358 U.S. 864. To be sure, these cases involved non-tax debts owed to the government. But there is nothing in the simple language of Section 3466 that would provide any basis for distinguishing between tax debts and other kinds of debt. The court below argued that Section 3466 cannot be applied to tax obligations under Chapter X in view of the provisions of Section

[2] With respect to liquidating bankruptcies, the Act prescribes in Section 64, 11 U.S.C. 104, a complete system of priorities that supersedes Section 3466. See *United States* v. *Marxen,* 307 U.S. 200. But, as we shall show, there is no comparable superseding provision in Chapter X.

199 of the Bankruptcy Act, which authorizes the Secretary of the Treasury to accept or reject a Chapter X plan of reorganization in respect to the claims of the United States, and provides that a reorganization court may not confirm a plan which does not provide for the payment of the tax and customs claims of the United States unless the Secretary agrees to accept a lesser amount. The court reasoned that if Section 3466 were applicable there would be "little need" for Section 199 and that Section 199 must be read as displacing "the more general and conflicting direction of § 3466" (App. A, p. 7a). But there is no inconsistency or anomaly in applying both sections in a Chapter X reorganization. Section 199 applies to both solvent and insolvent corporations, and provides simply that the United States cannot be compelled to accept less than full payment of its taxes unless the Secretary of the Treasury consents. If, as here, the Secretary insists upon payment, the question of priority for that payment then arises. Section 199 does not purport to answer the priority question; in the case of an insolvent corporation like the debtor here, the general provision of Section 3466 does answer it, stating that the United States is entitled to payment *first* if it insists upon it. Thus, far from being inconsistent, the two statutes dovetail perfectly in the situation presented by this case.

There is thus no basis for distinguishing away the conflict between the decision below and the decisions of the Fifth and Third Circuits in *Anderson* and *Cherry Valley Homes, supra.* Indeed, examination of the *Anderson* opinion reveals that the Fifth Circuit

reasoned from the assumption that the government would have Chapter X priority in tax debt cases to its conclusion on the only disputed point, whether it also had priority as to non-tax debts. The government's claims in the Chapter X proceedings in *Anderson* included tax as well as non-tax debts; the district court accorded the tax debts priority and denied it only as to the non-tax debts. 334 F. 2d at 113, n. 2. Then it was argued in the court of appeals that this differentiation was proper, because Section 199 specifically provided for tax debt priority in Chapter X proceedings, but there was no similar statement regarding other government debts. The Fifth Circuit refused to draw that inference in light of the long history of undifferentiated government priority under Section 3466 of the Revised Statutes and the distinct functions of Section 199 in cases not involving insolvency. *Id.* at 116–117.

The court of appeals considered that giving the United States an absolute priority under Section 3466 would conflict with Sections 216(7)(d) and 221(2) of the Bankruptcy Act, which require that a plan of reorganization under Chapter X must, in substance, be fair, equitable, and feasible. In its construction of the fair and equitable rule, however, the court in effect eliminated the well established distinctions between senior and junior creditors, holding the government entitled to nothing more than reasonable protection. This construction of the rule is contrary to the decisions of this Court first enunciated in equity receiverships (*Northern Pacific Ry.* v. *Boyd,* 228 U.S. 482) and subsequently under

Section 77B of the Bankruptcy Act, 11 U.S.C. 205 (*Case* v. *Los Angeles Lumber Co.*, 308 U.S. 106, rehearing denied, 308 U.S. 637; *Consolidated Rock Co.* v. *DuBois*, 312 U.S. 510) and under Chapter X (*Marine Properties, Inc.* v. *Trust Co.*, 317 U.S. 78; *Protective Committee, etc.* v. *Anderson*, 390 U.S. 414, 441). As these cases held, the fair and equitable rule is applicable initially to the senior claims, and each class of claims must be satisfied in full for the rights surrendered, in descending order, before the next junior class may properly be paid in the distribution. If junior creditors receive something of value at the expense of the senior creditors, the requirements of the fair and equitable rule are not met and thus the plan "comes within judicial denunciation." *Consolidated Rock Co.* v. *DuBois, supra,* p. 529. That in effect was the result of the plan approved below. Far from being required by the fair and equitable rule, the court of appeals' decision was actually inconsistent with that rule.

2. The plan of reorganization confirmed by the district court and approved by the court of appeals provides that the government's tax claims are to be satisfied by payment of 10% of the amount of the claims in cash within six months from confirmation and by the payment of the balance, without interest, in 78 equal monthly installments. The government is thus required to wait for more than 6½ years for payment and until after payment of lower ranking creditors, in contrast to general unsecured creditors who are paid the

entire amount of their recovery within six months of confirmation. In view of the significantly discounted present value of the installment payments to be made to the government, it can scarcely be said that the government is being paid in full, as is required by Section 199 of the Bankruptcy Act even if Section 3466 does not apply. Thus, at the very least, interest would be required to compensate the United States for the delay imposed upon its receipt of the amount dut it.[3] Moreover, the delay of 6½ years in payment of the Government's tax claims imposes upon it the risks of non-consummation of the plan; the government will not in fact receive its payments unless the purchaser remains solvent during the 78 months. In light of these factors, it is plain that even apart from the obsolute priority conferred by Section 3466 the plan approved below does not provide for the "payment" of the tax obligations guaranteed by Section 199. Finally, independent even of Section 199, the requirement that the United States accept discounted value so that junior creditors may be paid is something of value the junior creditors receive at the senior creditors' expense and thus "comes within judicial denunciation," *Consolidated Rock Co.* v. *DuBois, supra,* p. 529, and the rule of Section 216(7)(d) and 221(2).

[3] The court of appeals' observation (App. A, p. 7a) that the United States is not entitled to post-petition interest is irrelevant here. The government's contention was and is not that it should receive interest on the amount of the tax obligation, but rather that interest is required to give it eventual payment of the full *principal* amount of the obligation by compensating for the discount inherent in the installment plan.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
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JULY 1969.

APPENDIX A

In the United States Court of Appeals for the Seventh Circuit

September Term, 1968 September Session, 1969

No. 16857

In the Matter of

HANCOCK TRUCKING, INCORPORATED, Debtor,
UNITED STATES OF AMERICA, APPELLANT

v.

SHELDON A. KEY, TRUSTEE, APPELLEE

Appeal from the Order of the United States District Court for the Southern District of Indiana

February 27, 1969

Before FAIRCHILD and KERNER, *Circuit Judges,* and GORDON, *District Judge.*[1]

GORDON, *District Judge.* This appeal by the United States involves an unpaid federal tax claim in the stipulated amount of $375,386.55 and is taken from the order of the district court confirming an amended plan of reorganization under Chapter X of the Bankruptcy Act.

On May 3, 1954, the debtor filed a voluntary petition for reorganization in the district court in which it alleged its inability to meet its debts as they became

[1] The writer of this opinion is sitting by designation from the United States District Court for the Eastern District of Wisconsin.

due, and in which it requested the appointment of a trustee to operate its business and manage its property. The United States filed proofs of claim for federal withholding, excise and employment taxes.

The trustee filed an amended plan of reorganization on June 23, 1967. The plan provided that the tax claims were to be satisfied by payment of 10% of the amount of the claims in cash within six months from confirmation, and by payment of the balance, without interest, in 78 equal monthly installments. The installment payments were to be secured by an assignment of the note and chattel mortgage on the debtor's operating rights, which documents were signed by Hennis Freight Lines, Inc., the purchaser of said operating rights. The amount of the note is substantially in excess of the amount owed in connection with the federal tax claims. The unsecured creditors were to be paid 20% of their claims in cash within six months of confirmation; certain wage claimants and also certain state and local taxes were to be paid in full. This amended plan did not contemplate the continued existence of the debtor.

Previously, the district court had approved the agreement between the debtor and Hennis Freight Lines, Inc., whereby Hennis agreed to purchase all of the debtor's operating rights for an amount not to exceed $935,000, payable $300,000 within 90 days of approval of the sale by the Interstate Commerce Commission, and the balance payable in 78 equal monthly installments. The I.C.C. hearing examiner recommended that the transaction be approved, subject, however, to certain modifications in the operating rights. The I.C.C. issued its order on March 11, 1965 approving the hearing examiner's findings.

The United States filed a timely notice of rejection of the amended plan on November 20, 1967. Following

a hearing, the district court issued an order confirming the plan; it found that the debtor was insolvent; the plan was fair, equitable and feasible; and that the plan afforded adequate protection to the United States and to the state and local tax creditors by the assignment of the note and chattel mortgage executed by Hennis. The United States now appeals from the order of confirmation.

The issue presented on this appeal may be stated as follows: In a corporate reorganization under Chapter X, is a plan which provides for payment of the government's tax claims by installment payments without interest "fair and equitable", or is the government, in addition to such payments, entitled to receive its funds prior to the time payment is made to lesser ranking creditors?

Section 199 of the Bankruptcy Act (11 U.S.C. § 599) provides that

> "If the United States is a secured or unsecured creditor or stockholder of a debtor, the claims or stock thereof shall be deemed to be affected by a plan under this chapter, and the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the claims or stock of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any interest in, or claim against the debtor, as secured or unsecured creditor or stockholder), *no plan which does not provide for the payment thereof shall be confirmed* by the judge except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court. . . ." [Emphasis added.]

Section 216(7) (11 U.S.C. § 616), provides in part as follows:

> "A plan of reorganization under this chapter
> "...
> "(7) shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either as provided in the plan or in the order confirming the plan . . . (d) by such method as will, under and consistent with the circumstances of the particular case, *equitably and fairly provide such protection*. . . ." [Emphasis added.]

In addition, it is stated in § 221 (11 U.S.C. § 621) that the judge shall confirm a plan "if satisfied" that the provisions of § 199 have been complied with and the plan is "fair and equitable, and feasible".

The government contends that these sections, when read together, support the position that a plan which requires the government to wait 6½ years without interest for full payment and which permits, in the interim, payment to lesser ranking creditors, is not fair and equitable. The trustee maintains that the plan involved here adequately assures payment in full of the government's tax claim in a fair and equitable manner and urges that this is all that the applicable statutes require.

Section 199 does not prescribe a particular method of payment. It merely states that the district court shall not confirm a plan "which does not provide for the payment" of the government's tax claim, unless the government accepts a lesser amount. Nor do §§ 216(7)(d) or 221 adopt a specific method of payment; rather, they are couched in terms of "equity" and "fairness". As stated in 6A Collier, *Bankruptcy*,

¶10.17, pp. 490–491 (14th Ed. 1965), in speaking of §216(7)(d):

> "It has been said that these methods, properly speaking, are not 'methods' at all, but merely empower the judge, who must approve and confirm the plan, to approve any means of treatment which under the particular circumstances 'equitably and fairly' affords adequate protection to the dissenters."

Unlike the foregoing statutes, other chapters of the Bankruptcy Act do expressly provide that the government shall be paid in cash. For example, see §64(a)(4) [11 U.S.C. §104(a)].

The government stresses the importance of R. S. §3466 (31 U.S.C. §191) and contends that it entitles the United States to immediate payment. Section 3466 provides that

> "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, *the debts due to the United States shall be first satisfied;* and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed." [Emphasis added.]

The government urges that §3466 applies in Chapter X matters, which are not conventional bankruptcy proceedings. *United States* v. *Anderson,* 334 F. 2d 111 (5th Cir. 1964); *Lowden* v. *N. W. National Bank,* 298 U.S. 160, 163 (1936). There are a number of cases in which the government's priority under §3466 has been recognized in equity receivership proceedings, but

such cases did not involve Chapter X. *Price* v. *United States,* 269 U.S. 492, 499 (1926); *United States* v. *Butterworth-Judson Corp.,* 269 U.S. 504, 513 (1926); *Spokane County* v. *United States,* 279 U.S. 80 (1929); *New York* v. *Maclay,* 288 U.S. 290 (1933).

A case in which the court did apply § 3466 to a Chapter X matter is *United States* v. *Anderson,* 334 F. 2d 111 (5th Cir. 1964). By a divided court, the court of appeals for the fifth circuit decided that the government's *non-tax* debts were to have priority. However, the court did not specify whether such non-tax claims were entitled to "payment in full" or to "first satisfaction".

It seems to us that if § 3466 is applied to a Chapter X plan, the "fair and equitable" provisions of §§ 216 (7)(d) and 221 are effectively contradicted. Section 199 bars the court from confirming a plan "which does not provide for the payment" of tax claims—unless the Secretary of the Treasury assents. Section 216(7) states that a plan under Chapter X shall "equitably and fairly provide" adequate protection for "any class of creditors which is affected by and does not accept the plan". Section 221 provides that the judge shall confirm the plan if the requirements of § 199 have been complied with and the plan is "fair and equitable, and feasible". In our opinion, these three latter sections govern tax claims of the United States in Chapter X proceedings.

The specific provisions of §§ 199, 216(7)(d) and 221 of Chapter X cannot be fairly construed to require, as a matter of law, that a plan insure the government total satisfaction of its tax claims *before* other creditors receive anything, as a condition precedent to the plans being "fair and equitable".

Within Chapter X, §§ 199, 216 and 221 are interrelated statutes and part of a studied statutory plan.

Section 199 outlines the nature of the government's tax claim "priority", and the two other sections establish an equitable standard to govern the method of payment. If, as the government would have us hold, § 3466 creates an absolute right to first payment in addition to full payment, there would be little need for §§ 199, 216(7) and 221. These sections apply specifically to Chapter X proceedings and should control over the more general and conflicting direction of § 3466. *Baltimore Nat. Bank* v. *State Tax Commission of Maryland,* 297 U.S. 209, 215 (1936) and cases cited therein.

In the case at bar, the approved plan contemplates that the United States will be paid in full, and the record supports the trial court's conclusion that the plan affords reasonable protection to the government. The district court had the benefit of its own fact-finding, as well as that of the I.C.C., with respect to the value of the operating rights and the ability of the buyer to make payments under the plan. These factual determinations have not been specifically challenged here.

We hold that the trial court did not err in permitting lesser ranking creditors to receive payment simultaneously. Under the plan, the government does not surrender its right to full payment.

The government maintains that it is receiving only a "discounted value" of its claim because it does not receive interest, and it must wait 78 months for full satisfaction. The absence of interest is not a controlling factor here, for the law is well settled that the government is not entitled to post-petition interest on its tax claims in these proceedings. *United States* v. *Edens,* 189 F. 2d 876 (4th Cir. 1951), aff'd *per curiam,* 342 U.S. 865 (1952); *City of New York* v. *Saper,* 336 U.S. 328 (1949); *In re Kerber Packing Co.,* 276 F. 2d 245 (7th Cir. 1960).

The record sufficiently supports the district judge's exercise of the discretion vested in him under Chapter X. The order of the district court confirming the amended plan is affirmed.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

United States Court of Appeals for the Seventh Circuit
Chicago, Illinois 60604

Thursday, February 27, 1969

Before

Hon. THOMAS E. FAIRCHILD, *Circuit Judge*
Hon. OTTO KERNER, *Circuit Judge*
Hon. MYRON L. GORDON, *District Judge*

In the Matter of

HANCOCK TRUCKING, INCORPORATED, Debtor

UNITED STATES OF AMERICA, APPELLANT

v.

SHELDON A. KEY, TRUSTEE, APPELLEE

Appeal from the United States District Court for the Southern District of Indiana Indianapolis Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court confirming the amended plan, in this cause appealed from be, and the same is hereby, affirmed, in accordance with the opinion of this Court filed this day.

APPENDIX C

[Caption omitted]

Order Confirming Plan

At Indianapolis, in said District, on the 19th day of December, 1967.

This cause having come on to be heard on the 8th day of December, 1967, pursuant to the orders of this court of November 22, 1967, and September 21, 1967, for the consideration of the confirmation of the amended plan of reorganization of Hancock-Trucking, Incorporated, the above-named debtor, approved by this court on September 21, 1967, under Section 174 of the Bankruptcy Act, and of such objections as might be made to the confirmation thereof, and due deliberation having been had thereon, the

Court does find:

1. That notice of the said hearing has been duly given as required by Section 179 of the said Act, and the said order of this court of September 21, 1967.

2. That for the purposes of the said plan and its acceptance, this court on July 3, 1967, entered an order fixing the division of creditors and stockholders of the said debtor into eleven (11) classes, according to the nature of their respective claims and stock; namely

(1) Holders of claims for wages earned within the three months prior to the filing of the petition commencing these proceedings i.e. March 5, 1962, not in excess of six hundred dollars ($600.00) per person.

(2) The United States with respect to all

claims against the debtor inclusive of but not limited to taxes.

(3) The State of Indiana, Gross Income Tax Division, for taxes arising under the Gross Income Tax Law.

(4) The State of Indiana, County of Vanderburgh, for personal property taxes.

(5) The State of Ohio, Department of Taxation, for Highway Use Taxes.

(6) The State of Indiana, State of Illinois, State of Ohio, State of Pennsylvania and any other state or political subdivision thereof with respect to claims for all taxes inclusive of real estate taxes, other than those taxes set forth in paragraphs 3, 4, and 5 herein.

(7) Holders of claims for damages arising out of personal injuries.

(8) Holders of claims arising out of cargo loss and damage, freight and overcharge, exclusive of claims previously allowed in the plan of reorganization confirmed on January 31, 1957.

(9) Holders of general claims, including goods sold and delivered, services rendered, independent contractor freight and steel haulers, interline accounts, trailer interchange, wage claims other than those included in class (1) herein, inclusive of claims not fully discharged under the reorganization plan confirmed January 31, 1957, and not otherwise classified.

(10) Holders of shares of preferred stock now outstanding.

(11) Holders of shares of common stock now outstanding.

3. That the plan provides that all costs and expenses of administration and other allowances which may be made by the Judge in this proceeding shall

be paid in cash by Sheldon A. Key, Trustee of said debtor, out of the assets in his hands.

4. That the plan provides that all claims included in classes (1) and (6) are to be paid in cash in full.

5. That class (2) consists of one creditor, the United States of America, whose claim has been filed and allowed in the sum of Three Hundred Seventy-Seven Thousand Six Hundred Forty-Eight Dollars and Seventy-Nine Cents ($377,648.79); the said plan of reorganization has been rejected by said claimant by the filing of a written notice of the General Counsel for the Department of Treasury of the United States.

6. That class (3) consists of one creditor, the State of Indiana, Gross Income Tax Division, which has filed two claims for taxes in the aggregate amount of Thirty-One Thousand Two Hundred Eighteen Dollars and Ninety-One Cents ($31,218.91); and that the plan of reorganization has not been accepted by said creditor.

7. That class (4) consists solely of one creditor, the Treasurer of Vanderburgh County, State of Indiana, for taxes in the sum of Seventy-Six Thousand Six Hundred Fifty Dollars and Fifty-Five Cents ($76,650.55); and that the plan of reorganization has not been accepted by said claimant.

8. That class (5) consists solely of the State of Ohio, Department of Taxation for Highway Use Taxes, with a claim against the debtor for taxes in the sum of One Hundred Eighty-Five Thousand Dollars ($185,000.00), allowed herein; and that the plan has not been accepted by said claimant.

9. That pursuant to the order approving the amended plan or reorganization, creditors in classes (7), (8) and (9) have been determined to be holders of general unsecured claims and consolidated into one class for the purpose of determining whether said

class of creditors has accepted the plan; that on January 14, 1966, the court entered an order allowing the claims of National Leasing Company, Inc. in the amount of Seven Hundred Seventy-Eight Thousand Three Hundred Forty-Five Dollars and Sixty-Four Cents ($778,345.64) and the claim of Wilmark Insurance Agency, Inc. in the amount of One Hundred Six Thousand Eight Hundred Ninety-Nine Dollars and Eighty-One Cents ($106,899.81), but subordinating said claims to all other creditors in the proceeding; that the aggregate of filed and allowed claims of classes (7), (8) and (9), exclusive of the subordinated claims of Wilmark Insurance Agency, Inc. and National Leasing Company, Inc., is Eight Hundred Eighty-Three Thousand Three Hundred Fifty-Six Dollars and Seventy-One Cents ($883,356.71); and that the plan has been duly accepted in writing, filed in court, by or on behalf of creditors of the said debtor owing and holding Seven Hundred Five Thousand Nine Hundred Seventy-Five Dollars and Seventy-Three Cents ($705,975.73) of claims of classes (7), (8) and (9), whose claims have been filed and allowed, and which claims are at least two-thirds (⅔) in amount of the said filed and allowed claims of classes (7), (8) and (9), exclusive of aforesaid subordinated claims.

10. That on June 26, 1962, an order was entered herein fixing September 30, 1962, as the time within which the proofs of claim of creditors and of the interests of stockholders might be filed and providing that such claims and interests shall be deemed to be allowed unless objections are filed; and the

COURT IS SATISFIED:

11. That the provisions of Article VII, Section 199, and Article X of Chapter X of the said Act have been complied with.

12. That the said plan is fair and equitable, and feasible.

13. That adequate protection for the realization by the creditors in classes (2), (3), (4), and (5) is provided by the plan by securing the payment of their claims by an assignment of note and chattel mortgage on the operating rights to be transferred to Hennis Freight Lines, Inc., and that such method safeguards the interests of such creditors and equitably and fairly provides the protection for the payment of the claims of said creditors.

14. That the proposal of the said plan and its acceptance are in good faith and have not been made or procured by means of promise forbidden by the said Act; that all payments made or to be made by the said debtor or any other person for services and for costs and expenses in, or in connection with, this proceeding or in connection with the said plan and incident to the reorganization, have been or will be fixed by the Judge.

15. There are no persons who are to be directors or officers or voting trustees upon the consummation of the plan; and it is

ORDERED, ADJUDGED AND DECREED:

16. That the holders of claims included in classes (1) and (6) are not affected by the said plan, and that it is not requisite to the confirmation of such plan that it be accepted by the holders of such claims.

17. That the debtor is insolvent.

18. That the claims of National Leasing Company, Inc. and Wilmark Insurance Agency, Inc., as creditors in class (9), being subordinated to all other creditors, are of no value and that the acceptance of the said plan by the holders of said claims is not a prerequisite to the confirmation of such plan.

19. That the interests in class (10) and (11) are of no value and that the acceptance of the said plan by the holders of the interests in class (10) and (11) is not a prerequisite to the confirmation of such plan.

20. That the amended plan for the reorganization of the said debtor approved by this court on September 21, 1967, under Section 174 of the said Act, and as modified herein, a copy of which plan is annexed hereto and marked Exhibit "A", be, and it hereby is, confirmed.

21. That on or before the 20th day of March, 1968, Sheldon A. Key, Trustee of said debtor, be, and he hereby is, authorized and directed to consummate the sale of the operating rights of the debtor to Hennis Freight Lines, Inc. in accordance with the terms of the sale heretofore approved by this court pursuant to orders entered on October 10, 1962, and September 21, 1967.

22. That objections to the allowance of all claims in classes (1) through (9) not heretofore adjudicated, may be filed by all interested parties on or before the 20th day of March, 1968, and the court reserves the right and jurisdiction to adjudicate said claims.

23. That this court reserves the full right and jurisdiction to pass upon the allowance of compensation for services rendered in accordance with Article XIII of the Bankruptcy Act.

24. That this court reserves the full right and jurisdiction to make at any time and from time to time such orders in aid of the consummation of the said plan as the court shall deem proper.

(S) WM. E. STECKLER,
United States District Judge.

[Distribution omitted]

APPENDIX D

Revised Statutes:

> SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

(31 U.S.C. 191.)

Bankruptcy Act, c. 541, 30 Stat. 544 [as amended by Sec. 1, Act of June 22, 1938, c. 575, 52 Stat. 840, 893]:

> SEC. 199. If the United States is a secured or unsecured creditor or stockholder of a debtor, the claims or stock thereof shall be deemed to be affected by a plan under this chapter, and the Secretary of the Treasury is hereby authorized to accept or reject a plan in respect of the claims or stock of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as secured or unsecured creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided,*

That if the Secretary of the Treasury shall fail to accept or reject a plan for more than ninety days after receipt of written notice so to do from the court to which the plan has been proposed, accompanied by a certified copy of the plan, his consent shall be conclusively presumed.

(11 U.S.C. 599.)

SEC. 216. A plan of reorganization under this chapter—

(1) shall include in respect to creditors generally or some class of them, secured or unsecured, and may include in respect to stockholders generally or some class of them, provisions altering or modifying their rights, either through the issuance of new securities of any character or otherwise;

(2) may deal with all or any part of the property of the debtor;

(3) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

* * * * *

(7) shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either as provided in the plan or in the order confirming the plan, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such claims; or (b) by a sale of such property free of such claims, at not less than a fair upset price, and the transfer of such claims to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such claims; or (d) by such method as will, under and consistent with the circumstances of the particular

case, equitably and fairly provide such protection;

* * * * *

(11 U.S.C. 616.)

SEC. 221. The judge shall confirm a plan if satisfied that—

(1) the provisions of article VII, section 199, and article X of this chapter have been complied with;

(2) the plan is fair and equitable, and feasible;

* * * * *

(11 U.S.C. 621.)

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